

REMARKS

The claims of the present application have been amended to more accurately reflect the inventive subject matters set forth in the application. It will be noted that claim 1 has been amended to include the limitation of claims 2 and 3, and claims 2 and 3 have now been cancelled. Claim 4 was amended to clearly indicate that the face mask tube fitting and the nebulizer tube fitting are two different diametric dimensions and the invention is designed to be interposed between the two units, namely the face mask and the nebulizer and to permit the interconnection thereof.

Before discussing the primary reference cited by the examiner, it is believed that a few points should be noted. First, it should be realized that a current nebulizer has a standard tube fitting collar which in virtually all cases is a different diametric dimension than the diametric dimension of the face mask collar to which the nebulizer tube to be attached. Hence, the present invention was intended to circumvent the problem of a direct tube connection between the face mask and the nebulizer given the differing diametric dimensions between the two items. Furthermore, the tubing which is presently in existence and utilized by practitioners in the art does not facilitate the movement of the patient during the nebulizer treatment and therefore, in many instances, the nebulizer is not maintained in an upright position and thereby diminishes the efficacy of the treatment. The current invention was designed to provide a tubing where interconnecting between the face mask and the nebulizer can occur and which permits the swiveling movement of the tube relative to the face mask, as well as to provide tubing that has at least a partial memory so that it will remain in whatever position the practitioner moves the tubing depending on the positioning of the patient. Furthermore, given the fact that the tubing has a partial memory, it can assume virtually any position that the practitioner places the tubing in incident to the treatment. Hence, the positioning of the tubing is not limited.

With regard to patent 5,357,945, while at first glance the reference would appear to be pertinent, nevertheless, it is submitted that certain points are clearly evident. From a view of figures 2, 3 and 4 of the drawings of the -945 patent, it is clear that the tubing has the same diametric dimension at both ends of the tube. Hence, that tubing cannot be utilized in current practice for interconnecting a nebulizer with a face mask. As was indicated previously, the current state of the art is that the nebulizer tube fitting and the face mask tube fitting are not the same dimension. Hence, the tubing as disclosed in the -945 patent will not be capable of such interaction.

It is further noted in the body of the patent that the tubing of the -945 patent can only assume three rest positions. This is specifically noted in column 5, in lines 29 through 34. As set forth therein, it clearly indicated that the invention specifically has only three rested positions and does not freely swing or sway or otherwise flex and for this reason, the inventor used the expression "semi-flexible". As such, the tubing as disclosed in the -945 patent will not operate in the same manner as the tubing presented by the present invention.

The claims as presented, attempt to highlight these differences in that the claims clearly require that the tube fitting as between the face mask and the tubing allows for the swivel movement of the tubing relative to the face mask, which accommodates the movement of the patient during nebulizer treatment, and further accommodates the different diametric dimensions as between the nebulizer tube fitting and the face mask tube fitting. Given these differences, which are deemed critical to the invention as presented herein, it is believed that the teachings of the -945 patent remain prior art teachings and do not impact the inventive subject matter as presented herein.

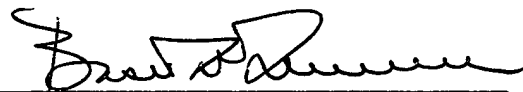
For the reasons set forth above, applicant submits that the inventive subject matter is now presented by the present claims clearly distinguishes over the art of record and that applicant submits that the subject matter is patentably distinguishable thereover.

For the reasons set forth above, applicant earnestly solicits a notice of allowance.

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